

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re:

Case No. 09-75180

ALICIA SHANAE TIMMONS,

Chapter 7

Debtor.

Judge Thomas J. Tucker

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**ORDER DISMISSING CASE**

On November 15, 2009, the Debtor filed a voluntary petition for relief under Chapter 7, initiating this case, and also filed “Exhibit D” (Individual Debtor’s Statement of Compliance With Credit Counseling Requirement)(Docket # 6). Debtor checked Box 3 on Exhibit D, and thereby stated the following:

I certify that I requested credit counseling services from an approved agency but was unable to obtain the services during the five days from the time I made my request, and the following exigent circumstances merit a temporary waiver of the credit counseling requirement so I can file my bankruptcy petition.  
*[Summarize exigent circumstance here.] debtor does not have any money at this time to pay for counseling*

(italics and underlining in original). Debtor did not file a motion for approval of the certification, as required by LBR 1007-6(a)(E.D. Mich.)

On November 22, 2009, Debtor filed a “Certificate of Counseling” (Docket # 18), which states that on November 19, 2009, Debtor received “an individual [or group] briefing that complied with the provisions of 11 U.S.C. §§ 109(h) and 111.”

For the following reasons, the Court must dismiss this case. 11 U.S.C. § 109(h)(1) requires, subject to certain exceptions, that a debtor obtain a credit counseling briefing before filing a bankruptcy petition, in order to be eligible to be a debtor under the Bankruptcy Code. That section provides in relevant part, that

an individual may not be a debtor under this title unless such individual has, **during the 180-day period preceding the date of filing the petition by such individual**, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

(Emphasis added). 11 U.S.C. § 109(h)(3) provides a limited exception to § 109(h)(1)'s requirement of obtaining a credit counseling briefing **before** filing the bankruptcy petition. This exception, when applicable, permits a debtor to obtain the required credit counseling briefing up to 30 days after filing the petition, and upon entry of an order for cause shown, up to 45 days after filing the petition. Section 109(h)(3)(A) provides:

**(3) (A)** Subject to subparagraph (B), the requirements of paragraph (1) shall not apply with respect to a debtor who submits to the court a certification that--

**(i)** describes exigent circumstances that merit a waiver of the requirements of paragraph (1);

**(ii)** states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain the services referred to in paragraph (1) during the 5-day period beginning on the date on which the debtor made that request; and

**(iii)** is satisfactory to the court.

LBR 1007-6(a) provides the procedure that a debtor must use when filing a certificate of exigent circumstances under § 109(h)(3)(A):

**(a) Certification Procedures.** A debtor who files a certification under § 109(h)(3)(A) **shall also file a motion for approval of the certification. The debtor shall file the certification and the**

**motion with the petition, serve it on all parties and file a certificate of service.** The deadline to file a response shall be 10 days after service. If no timely response is filed, the certification shall be deemed satisfactory under § 109(h)(3)(A)(iii) without a hearing or further order. **The motion shall be accompanied by a notice that the deadline to file a response is 10 days after service and that if no response is filed, the court will deem the certification satisfactory under § 109(h)(3)(A)(iii) without a hearing.**

(emphasis added).

In this case, Debtor failed to comply with the requirements of both § 109(h)(3)(A) and LBR 1007-6(a).

First, Debtor never filed a motion to approve her certification of exigent circumstances, as required by LBR 1007-6(a). Because that motion must be filed with the petition, it is now too late to file such a motion.

Second, even if Debtor had filed such a motion, Debtor's certification of exigent circumstances fails to provide an explanation of why Debtor could not obtain credit counseling before filing her bankruptcy petition, which is "satisfactory to the court" as required by 11 U.S.C. § 109(h)(3)(A)(iii). Debtor's mere statement in her Exhibit D, that "debtor does not have any money at this time to pay for counseling," without more, is not a satisfactory explanation.

This is so for at least three reasons. First, Debtor paid \$250.00 of the agreed \$500.00 flat fee to her attorney for attorney fees before filing this case, according to the Rule 2016(b) statement filed with the petition. (Docket # 1 at pdf p. 27). No explanation is given why Debtor could not have paid her attorney \$200.00 rather than \$250.00, and used \$50.00 to pay for a pre-

petition credit counseling briefing.<sup>1</sup>

Second, even if Debtor truly could not pay the \$50.00 needed to obtain a credit counseling briefing before she filed her petition in this case, that should not have prevented her from obtaining the briefing pre-petition. In order to be approved by the United States Trustee, every credit counseling provider must provide such services “without regard to ability to pay the fee.” *See* 11 U.S.C. § 111(c)(2)(B).

Third, Debtor obviously was able to pay for a credit counseling briefing (or otherwise obtain it without paying for it,) at least as soon as November 19, 2009. Debtor does not explain why she could not have waited to file her bankruptcy petition until after she obtained her briefing on November 19, 2009.

Because the exception under 11 U.S.C. § 109(h)(3) does not apply, Debtor was required to meet the requirement of 11 U.S.C. § 109(h)(1), that she obtain credit counseling *before* filing her bankruptcy petition, to be eligible to be a debtor in this case.

Debtor did not meet this requirement. She only received credit counseling *after* her petition was filed.

For these reasons, Debtor is not eligible to be a debtor in this case under 11 U.S.C. § 109(h)(1), and this case must be dismissed.

Accordingly,

IT IS ORDERED that this bankruptcy case is DISMISSED.

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<sup>1</sup> It appears that a credit counseling briefing from the provider that the Debtor chose post-petition, GreenPath, Inc., costs \$50.00. *See* the following link on GreenPath’s website: [https://www.greenpath.com/bankruptcy/attorney/fees.htm?ekmense1=ad110d3d\\_13\\_0\\_615\\_3](https://www.greenpath.com/bankruptcy/attorney/fees.htm?ekmense1=ad110d3d_13_0_615_3).

**Signed on November 23, 2009**

**/s/ Thomas J. Tucker**  
**Thomas J. Tucker**  
**United States Bankruptcy Judge**